

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
DEVIRIL DAYE

Plaintiff,

-against-

LONG ISLAND RAILROAD COMPANY,

Defendant.
-----X

COMPLAINT

PLAINTIFF DEMANDS
TRIAL BY JURY

Plaintiff, by his attorney, FREDRIC M. GOLD PC, complaining of the defendant, respectfully shows to this Court and alleges:

1. The actions herein arises under the Federal Employer's Liability Act (45 U.S.C. Sec. 51 et al.).
2. Upon information and belief and at all times herein mentioned, the defendant was a public benefit corporation organized and existing under and by virtue of the laws of the State of New York.
3. Upon information and belief and at all times herein mentioned, the defendant had been and still is doing business in the County of New York, State of New York, within the jurisdiction of this Court.
4. At all times herein mentioned, the defendant was and now is a common carrier by rail engaged in interstate commerce between different states in the United States.

AS AND FOR A FIRST CAUSE OF ACTION

5. That on or about September 6, 2019 and at all times hereinafter mentioned the defendant employed the plaintiff as a Conductor in furtherance of its business in interstate commerce.

6. That on or about September 6, 2019 and at all times hereinafter mentioned, the defendant maintained and controlled railroad operations which included the Long Island Railroad's Hicksville Station and tracks and rails and appurtenances thereto in the County of Nassau, State of New York over through and upon which the defendant operated its engines, trains and cars under its direction and control.

7. That on or about September 6, 2019 and at all times hereinafter mentioned, while the plaintiff, as an employee of the defendant, was in the performance of his duties as a Conductor at or near the aforesaid location, he was caused to sustain severe and disabling injuries as a result of the negligence, carelessness and recklessness of the defendant in failing to provide her with a safe place in which to work as hereinafter set forth.

8. That on or about September 6, 2019 and at all times hereinafter mentioned, plaintiff was caused to sustain severe injuries after slipping on soapy water which had leaked through the train car following a washing.

9. That said accident and resulting injuries to the plaintiff were caused solely by reason of the negligence, carelessness and recklessness of the defendant, its agents, servants and/or employees' in failing to exercise due care and diligence; in failing to provide plaintiff with a safe place to work and safe equipment with which to work; in failing to promulgate safety rules and procedures for activities carried out by their personnel at the aforesaid place; in failing to warn plaintiff of the existence of the dangers involved in the performance of his duties as a Conductor; in failing perform adequate inspections and maintenance on the train car in question to ensure that such leaks would not occur; in failing to have procedures in place and/or to follow such procedures to inspect the interior of train cars after washing to ensure that they remain dry and hazard free.

10. That the said injuries were incurred while the plaintiff was acting in furtherance of interstate commerce, or in work substantially affecting the same.

11. That the plaintiff was damaged in a sum in excess of SEVENTY-FIVE THOUSAND (\$75,000.00).

AS AND FOR A SECOND CAUSE OF ACTION

12. That on or about May 26, 2020 and at all times hereinafter mentioned the defendant employed the plaintiff as a Conductor in furtherance of its business in interstate commerce.

13. That on or about May 26, 2020 and at all times hereinafter mentioned, the defendant maintained and controlled railroad operations which included the Nostrand Avenue tunnel and tracks and rails and appurtenances thereto in the County of Kings, State of New York over through and upon which the defendant operated its engines, trains and cars under its direction and control.

14. That on or about May 26, 2020 and at all times hereinafter mentioned, while the plaintiff, as an employee of the defendant, was in the performance of his duties as a Conductor at or near the aforesaid location, he was caused to sustain severe and disabling injuries as a result of the negligence, carelessness and recklessness of the defendant in failing to provide her with a safe place in which to work as hereinafter set forth.

15. That on or about September 6, 2022 and at all times hereinafter mentioned, plaintiff was caused to sustain severe injuries after he fell forward and struck the fireman's cabinet due to the train's travelling at excessive speed through the tunnel and was bouncing badly as a result.

16. That said accident and resulting injuries to the plaintiff were caused solely by reason of the negligence, carelessness and recklessness of the defendant, its agents, servants and/or employees' in failing to exercise due care and diligence; in failing to provide plaintiff with a safe

place to work and safe equipment with which to work; in failing to promulgate safety rules and procedures for activities carried out by their personnel at the aforesaid place; in failing to warn plaintiff of the existence of the dangers involved in the performance of his duties as a Conductor; in failing perform adequate inspections and maintenance on the train in question; in failing to instruct and train it employees on safe speeds of travel; in failing to provide instruction on areas of its tracks that might be susceptible to such bouncing.

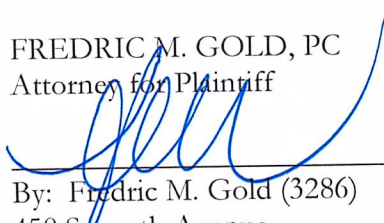
17. That the said injuries were incurred while the plaintiff was acting in furtherance of interstate commerce, or in work substantially affecting the same.

18. That the plaintiff was damaged in a sum in excess of SEVENTY-FIVE THOUSAND (\$75,000.00).

WHEREFORE, plaintiff demands judgment against defendant THE LONG ISLAND RAILROAD COMPANY, in a sum in excess of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00) in the First Cause of Action and in a sum in excess of SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00) in the Second Cause of Action together with costs and disbursements.

Dated: New York, New York
July 8, 2022

FREDRIC M. GOLD, PC
Attorney for Plaintiff



By: Fredric M. Gold (3286)
450 Seventh Avenue
New York, New York 10123
212.244.2740

To: Long Island Railroad Company
Legal Department
Jamaica Station
Jamaica, New York 11435